APPENDIX A

Additional Statutes Involved

The following additional provisions of the Immigration and Nationality Act (Act of June 27, 1952, 66 Stat. 163, 8 U.S.C. §§ 1101 *et seq.*) are also involved:

8 U.S.C. § 1106 [Sec. 401]. Joint Congressional Committee-Composition

(a) There is established a joint congressional committee to be known as the Joint Committee on Immigration and Nationality Policy (hereinafter referred to as the "Committee") to be composed of ten members as follows: (1) five members who are members of the Committee on the Judiciary of the Senate, three from the majority and two from the minority party to be appointed by the President of the Senate; and (2) five members who are members of the Committee on the Judiciary of the House of Representatives, three from the majority and two from the minority party to be appointed by the Speaker of the House of Representatives.

* * * * *

FUNCTIONS

(d) It shall be the function of the Committee to make a continuous study of (1) the administration of this chapter, and its effect on the national security, the economy, and the social welfare of the United States, and (2) such conditions within or without the United States which in the opinion of the Committee might have any bearing on the immigration and nationality policy of the United States.

REPORTS

(e) The Committee shall make from time to time a report to the Senate and the House of Representatives concerning the results of its studies together with such recommendations as it may deem desirable.

8 U.S.C. § 1427 [Sec. 316]. Requirements of naturalization-Residence

(a) No person, except as otherwise provided in this sub-chapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediatey preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has residered continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

APPENDIX B

MATTER OF M—D—S—&L—G—&W—D—C—

In EXCLUSION Proceedings

A-11135619
A-11132260
A-10367389

Decided by Board December 12, 1958

Resident alien—"Commuter"—Commuter status lost when alien has been out of employment for 6 months regardless of validity of Form I-151 as reentry document.

Regulation authorizing use of Form I-151 as reentry document for resident alien who has been absent from United States for period not exceeding one year does not cause any change in long-standing rule relating to commuters.

Loss of commuter status as occurs, as before, when the alien has been out of employment in the United States for more than 6 months. (Cf. *Matter of L——*, 4 I. & N. Dec. 454, and *Matter of H——O——*, 5 I. & N. Dec. 716.)

EXCLUDABLE: Act of 1952—Section 212(a)(20) (8 U.S.C. 1182(a)(20))—No visa, no passport.

BEFORE THE BOARD

DISCUSSION: The cases come forward on appeal from the District Directors at Detroit, Michigan, and at Buffalo, New York, from decisions rendered by two special inquiry officers on September 12, 1958, September 29, 1958, and October 6, 1958, directing that the applicants be admitted as Canadian resident commuters. The cases have been combined inasmuch as they involve a common set of facts and point of law.

* * * * *

The applicants belong to a class known as commuters, namely, aliens who are lawfully admitted for permanent residence but continue to retain their place of residence in foreign contiguous territory while commuting to their place of employment in this country. This anomalous class of immigrants known as "commuter" is fully treated in *Matter of L——*, 4 I. & N. Dec. 454. After the enactment of the Immigration and Nationality Act, since that act was silent with regard to commuters, it was again necessary to consider the question and it was decided in *Matter of H——O——*, 5 I. & N. Dec. 716, that this long-standing practice had not been disturbed by the enactment of the new act.

In numerous cities along the international boundary lines to the north and to the south of the United States live many aliens who each day journey to their jobs on the American side of the border and at the end of the same day usually return to their homes on the other side of the

frontier. At the same time there exists a somewhat smaller daily movement of American to and from jobs in Canada and Mexico. This flow of aliens across the frontier posed no administrative difficulty until the passage of the Immigration Act of 1924 which laid down universal rules for documentation and classified all arriving aliens as immigrants unless they fell into certain designated groups described as nonimmigrants. Until April 1, 1927, they were permitted to enter as border crossers without having been admitted for permanent residence. However, on that date the policy was changed by the issuance of General Order No. 86, which provided that such aliens entering the United States subsequent to June 30, 1924, to engage in employment or to seek employment would not be considered as visitors for business or pleasure but as aliens of the immigrant class and granted them a reasonable period of time not to exceed 6 months from June 1, 1927, within which to obtain immigration visas if they had been enjoying the border-crossing privilege on April 1, 1927. The legality of General Order No. 86 was sustained in the case of *Karnuth* v. *United States ex rel. Albro*, 279 U.S. 231 (1929). Although General Order No. 86 was later cancelled, the rights accrued thereunder were not cancelled and subsequent regulations provided that alien commuters should be considered aliens of the immigrant class (former 8 CFR 110.6. previously paragraph 1, subdivision C of Rule 3, Immigration Laws and Rules of January 1, 1930). The adoption of the policy found in General Order No. 86 aroused controversy and apprehension along the Canadan and Mexican borders and fears that the means of livelihood of the commuter would be jeopardized if access to their jobs were shut. Representations on high diplomatic levels were made and out of these discussions there eventually emerged an amplification of our policy which permitted alien commuters to establish lawful admission into the United States for permant residence, then furnished them with border-crossing identification cards and permitted them to cross international boundary en route to and from their em-

ployment (former 8 CFR 166). A memorandum from the Commissioner General (File 55499/537-A, November 16, 1927), in answer to questions raised by General Order No. 86 set forth the policy that an alien residing in foreign contiguous territory and enjoying the border-crossing privilege abandons such right when he discontinues his employment in the United States and does not renew same within a period of 6 months.

Thus, it has been held that an alien of the immigrant commuter class who has been out of employment in the United States for 6 months is, notwithstanding temporary entries in the meanwhile for other than employment purposes, deemed to have abandoned his status of a permanent resident in the United States and thereafter, if he seeks to reenter, is not admissible without again qualifying for admission as a permanent resident (*Matter of L——*, 4 I. & N. Dec. 456). The salient points to be considered in determining abandonment of commuter status are intention and loss of employment. It has been held that a commuter remains entitled to such classification, notwithstanding an absence of 6 months from this country and interruption of his work for that period, if his employment, job or position has not been lost and if the interruption was due to uncontrollable circumstances, such as serious illness, pregnancy, or a disabling injury, such as a broken arm, in which case the 6-month period tolls until the commuter is against employable.[1]

A commuter who has been legally admitted as an immigrant is entitled to receive a border-crossing identification card so long as he continues in the status of a commuter (*Matter of H——O——*, 5 I. & N. Dec. 718). The commuter situation manifestly does not fit into any precise category found in the immigration statutes. The status is an artificial one, predicated upon good international relations maintained and cherished between friendly neighbors.

---

[1] *Matter of D——C——*, 3 I. & N. Dec. 526, 527, Editor's note.

As examples of the anomalous situation of the commuter, he cannot claim naturalization benefits since the naturalization statute by definition equates residence with domicile rather than an assimilated status (*Petition of Wright*, 42 Supp. 306; *In re Barron*, 26 F.2d 106 (1928); *Petition of Correa*, 79 F. Supp. 265 (1948)). It has also been held that a commuter is not a resident of the United States under the Selective Service regulations (32 CFR 611.13(a)(6), 611.13 (b)(7), (1944)), because he did not reside in the United States for the required period of 3 months. On the other hand, an alien who has the status of a commuter must notify the Commissioner of his current address in compliance with section 35 of the Alien Registration Act of 1940, as amended, and regulations issued thereunder.

However, as part and parcel of this policy has been the holding that the commuter who has been out of employment in the United States for 6 months is, notwithstanding temporary entries in the meanwhile for other than employment purposes, deemed to have abandoned his status of a permanent resident in the United States and thereafter, if he seeks to reenter, is not admissible without again qualifying for admission as a permanent resident. Thus, in *Matter of D——C——*, 3 I. & N. Dec. 519 (1949), the alien, a native and citizen of Canada, was admitted to the United States for permanent residence on May 25, 1948, and on the same date was issued a resident alien's border-crossing identification card, the validity of which expired on May 22, 1949. He returned to Canada on the same date of his admission and had no intention of residing here and never had employment here but merely made several temporary visits always with the intention of returning to his home in Canada. On December 13, 1948, during the period of validity of his resident alien's border-crossing identification card, he sought to enter for the purpose of seeking employment. His possession of the unexpired resident alien's border-crossing card did not avail him when seeking admission as an immigrant because he was not con-

sidered as a returning legal resident within the purview of section 4(b) of the Immigration Act of 1924. It is to be noted that in that case the applicant was not in fact a commuter because he had never been employed in this country and had not been employed for a period of more than 6 months prior to his application for admission with the border-crossing card. Thus, it would appear that a commuter is entitled to readmission as a returning resident, but that the primary consideration is that he maintain the status of a commuter. As a corollary requirement, he must also comply with the conditions controlling the use of border-crossing cards.

In the instant cases, the applicants had been employed in the United States for periods of approximately 2 weeks, 5 weeks and 5 months, respectively. Their jobs were then terminated. Since that time all of the applicants have been employable for more than 6 months but have been unable to obtain work in the United States during that period. At least one has done odd jobs in Canada and two have no assurance of resuming their jobs.

The circumstances presented here differ from those in *Matter of L——*, 4 I. & N. Dec. 454. There the applicant had been steadily employed in the United States by one firm for 25 years, was disabled by illness for 5 months and sought entry into the United States 6 months and 1 week after he was absent from his job to resume his employment. In view of the fact that there was no evident intention to abandon commuter status, that he had never lost his job which was being held open and was available to him during the period of his absence, that the illness tolled the 6-month period until he was again employable, he was admitted as a returning resident. In the cases before us, it is evident that the previous employment in the United States had been lost and were not available during the 6 months or more of unemployment. Under the historical policy set out above, they are no longer to be regarded as possessing the status of commuters and

the fact that their resident alien's border-crossing card or its substitute, the Alien Registration Receipt Card, Form I-151, may still be valid does not avail the applicants inasmuch as they are not eligible for the commuter status. The appeals of the district directors will be sustained and exclusion will be ordered.

ORDER: It is ordered that the appeals of the district directors from the decisions of the special inquiry officers be sustained and that the aliens be excluded on the documentary grounds set forth in the caption.

APPENDIX C

IN THE MATTER OF H—— O——

In EXCLUSION Proceedings

A-7675485

Decided by the Board March 16, 1954

Commuters—System of admission not changed by Immigration and Nationality Act.

The practice of considering commuters as permanent residents has not been disturbed by the Immigration and Nationality Act of 1952, but rather it has been impliedly approved by the Congress since the legislative history of the act reveals a discussion without dissent.

EXCLUDABLE:

Act of 1952—Section 212 (a) (20)—No immigrant, visa no passport.

BEFORE THE BOARD

DISCUSSION: This case is before us on appeal from a decision of the special inquiry officer dated October 14, 1953, excluding the alien on the above-stated ground. Appellant, a 40-year-old native and citizen of Mexico, sought admission to the United States at Calexico, Calif., on October 13, 1953, for 1 day in order to proceed to his regular employment in this country. He was originally

admitted for permanent residence at Calexico on June 18, 1942, and has since worked in this country and lived in Mexicali, B. C., Mexico.

The instant case clearly poses the question of whether the Immigration Act of 1952 (66 Stat. 163; 8 U.S.C. 1101) has restricted, changed or otherwise limited the long established system of commuter admissiions. Many aliens living near tl e border in Canada and Mexico have long had the habit of commuting daily to employment in the United States. Only after immigration was restricted under the act of 1924 (43 Stat. 153; 8 U.S.C. 201) was the present scheme of initially admitting commuters as immigrants for permanent residence commenced by Immigration Service General Order 86 (April 1, 1927). Since that time, it has been continued administratively (CF., 8 C.F.R. 110.6)[1] with the system being recognized in the legislative history of the Immigration Act of 1952.[2] These discussions reveal no congressional dissatisfaction with the commuter procedure.

Since section 101 (a) (15) (B)[3] of the act of 1952 has not changed the statutory provisions governing nonimmigrant temporary visitors, commuters may not be admitted

---

[1] *Aliens coming for employment while residing in contiguous territories: classification.*—Aliens entering the United States to engage in existing employment or to seek employment in this country and who desire to continue to reside in foreign contiguous territory will be considered as aliens of the immigrant class.

[2] S. Rept. 1515, 81st Cong., 2d sess., p. 535; S. Rept. 1137, 82d Cong., 2d sess., p. 4; H. Rept. 1365, 82d Cong., 2d sess., p. 32.

[3] The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

• • • • • • • • • • • •

B. An alien other than one coming for the purpose of study or of performing skilled or unskilled labor or as a represenative of a foreign press, radio, film or other foreign information media coming to engage in such vocation having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

under this section any more than they were eligible for admission under section 3 (2)[4] of the act of 1924. Nor has section 101 (a) (15) (H) specifically changed the administrative practice for commuter admissions. However, although section 101 (a) (15) (H) has added a new statutory class of nonimmigrants, alien commuters as persons coming to the United States to engage in regular employment are not included in this group of aliens coming here temporarily or to perform temporary services.

In the past, commuters upon admission for permanent residence were issued resident alien's border crossing idenitfication cards (8 C.F.R. 166[5]), were permitted to continue to reside abroad, and were treated as returning resident aliens at each entry. The procedure for issuance of border crossing cards is substantially the same under 8 C.F.R. 211.11[6] as under 8 C.F.R. 166. In addition, regulations issued under authority of sections 103 and 211 (b) provide for waiver of documents for an alien returning after a temporary visit of six months or less in Canada or Mexico, if a valid resident alien's border crossing identification card is presented (8 C.F.R. 211.2 (c) (1)[7]).

---

[4] When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except * * *.

(2) An alien visiting the United States temporarily as a tourist or temporarily for business or pleasure.

[5] See appendix A.
See also, 8 C. F. R. 176.202 (d), issued under act of 1924.

[6] See appendix B.

[7] *Immigrant not required to present visas or passports.*—Immigrants of the following-described classes applying for admission to the United States need not present visas or passports: * * *

(c) Aliens (including alien crewmen) of the following-described classes who have been lawfully admitted for permanent residence, who are otherwise admissible, and who are returning after a temporary absence:

(1) An alien who is returning to the United States after a temporary absence of not more than 6 months in Canada or Mexico only, and who presents a valid unexpired resident alien's border crossing identification card.

Under the 1952 act, the meaning of lawful admission for permanent residence in section 101 (a) (20)[8] is interrelated to the definition of the border crossing identification cards in section 101 (a) (6)[9] and the grounds for readmission of aliens after temporary visits abroad under section 211 (b). Actually the praseology of section 101 (a) (20) is very similar to 8 C.F.R. 176.101 (n),[10] under which the system of commuted admissions flourished. Even if the definition of "residence" in section 101 (a) (33)[11] is considered in conjunction with the provisions of section 101 (a) (20), it does not in fact change the status of the commuter.

The phrase admission for permanent residence continues to refer to a status by which the alien is granted the privileged of residing in the United States permanently as an immigrant upon lawful admission. Thus, a commuter who has been legally admitted as an immigrant is entitled to receive a border crossing identification card so long as he continues in that status. Similarly, a commuter is entitled

---

[8] The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the Immigration laws, such status not having changed.

[9] The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations.

[10] "Lawful permanent residence of the United States" means an alien who has been lawfully admitted into the continential United States, the Virgin Islands, Puerto Rico, or Hawaii of permanent residence therein, and who has since such admission maintained his domicile in the United States

[11] The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. • • •

to readmission under section 211 (b)[12] as a returning resident while he maintains this status and complies with conditions controlling the use of border crossing cards. 8 C.F.R. 211.11, 211.2 (c) (1).

It is therefore concluded that the practice of considering commuters as permanent residents has not been disturbed by the act of 1952, but rather it has impliedly received congressional approval, since the legislative history of the act reveals a discussion without dissent. Without clear statutory language requiring a mandatory change in the commuter scheme, the law cannot be construed as prohibiting this procedure.[13]

For these reasons, the ground of exclusion is not supported and the appeal is sustained.

ORDER: It is hereby ordered that the appeal be sustained and the alien admitted as a commuter.

---

[12] Notwithstanding the provisions of section 212 (a) (20) of this act, in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigration visa, reentry permit or other documentation.

[13] Cf., *Matter of D—— C——*, A-6926895, 3, I. & N. Dec. 519 (B. I. A. June 29, 1949); *Matter of F——*, A-6300563, 3, I. & N. Dec. 526n (*Editor's note*) (Atty. Gen. Jan. 3, 1947). The fiction of a commuter's permanent United States residence coinciding with his place of employment was recognized judicially in *Petition of Correa*, 79 F. Supp. 265 (W. D. Tex., 1948). In that case, however, the court pointed out that this residence could not supply the need for an actual residence in this country if such actual residence was specifically required by immigration and nationality laws. The issue in the *Correa* case was one of naturalization.

Appendix A

Immigration regulations concerning border crossing identification cards as of June 27, 1944.

Sec. 166.1 *Resident alien's border crossing identification card; qualifications to obtain.*—A resident alien's border crossing identification card may be issued to any alien who, upon application therefor, submits satisfactory evidence that he (1) has been legally admitted to the United States for permanent residence and has not relinquished the status of a permanent resident, (2) has complied with the applicable provisions of the Alien Registration Act, 1940, and (3) has a legitimate purpose and reasonable need to make a temporary visit or visits to Canada or Mexico, with no single visit to exceed a period of 6 months: *Provided, however,* That no uch card shall be issued nor shall any such card previously issued be renewed unless the applicant or holder thereof is a person who is permitted to depart from the United States under the terms of laws, regulations, Executive orders, or other governmental restrictions regulating the departure of aliens from the United States in effect at the time application for such card or renewal thereof is made. (Amended October 22, 1951, 16 Fed. Reg. 9633; May 30, 1952, 17 Fed. Reg. 4921.)

Sec. 166.4. *Resident alien's border crossing identification card; use.*—The rightful holder of a valid resident alien's border crossing identification card issued under section 166.3 may present that document in lieu of an immigration visa or reentry permit when applying for admission at any land, water, or airport of entry in the continental United States or Alaska as a returning legal resident after an absence from the United States of not more than 6 months, provided that during such absence he shall not have visited any foreign territory other than Canada or Mexico. The presentation of a resident alien's border crossing identification card shall not otherwise relieve the applicant from establishing that he is not subject to exclu-

sion from the United States. (Amended May 14, 1950, 15 Fed. Reg. 2076; May 30, 1952, 17. Fed. Reg. 4921.)

Appendix B

Pertinent provisions of title 8, Code of Federal Regulations concerning the resident alien's border crossing identification card.

211.11 *Resident alien's border crossing identification card.*—(a) Form.—For the purposes of sections 211 (b) and 212 (a) (20) of the Immigration and Nationality Act and this part, Form I-151 (Alien Registration Receipt Card) or any outstanding valid Form I-187 (Resident Alien's Border Crossing Identification Card) shall be accepted as a resident alien border crossing identification card when in possession of and presented by the rightful holder thereof during the period of its validity.

(b) *Use.*—The presentation of such card shall not relieve the holder from establishing his admissibility to the United States under the applicable provisions of the Immigration laws and regulations. A resident alien's border crossing identification card may be used by an ailen who has been lawfully admitted to the United States for permanent residence for the purpose of (1) facilitating determination of his status as a returning legal resident when applying for admission at any land or water port of entry or international airport in the continental United States or Alaska after an absence from the United States of not more than 6 months, during which absence he visited no foreign country other than Canada, Mexico, or both, and (2) satisfying the documentary requirements of sections 211 (b) and 212 (a) (20) of the Immigration and Nationality Act and this part.

(c) *Form I-151; who may apply.*—Any alien lawfully admitted to the United States for permanent residence who is not in possession of a Form I-151 may apply for such form in accordance with the provisions of section 264.5 of this chapter.